

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

FRANKLIN C. EDMONDS,

Plaintiff,

v.

OPERATING ENGINEERS LOCAL 139,

Defendant.

ORDER

08-cv-567-bbc

On June 1, 2009, I granted defendant Operating Engineers Local 139's motion to dismiss this case. On June 11, 2009, plaintiff Franklin Edmonds filed a notice of appeal. Now plaintiff has filed two motions, one requesting leave to submit copies of exhibits submitted earlier in the case, and another requesting to supplement the record with new exhibits. I will deny both of these motions.

First, regarding plaintiff's motion for leave to submit copies of certain exhibits submitted earlier in the case, plaintiff states that after the case was dismissed he called the clerk of court's office and requested that the original paper copies of his exhibits be returned to him. When he picked up the exhibits, several were missing. Plaintiff seems to be under the impression that those exhibits are missing from the record. However, review of the docket in this case shows that the record includes electronic copies of the allegedly missing

exhibits. Therefore, I will deny as unnecessary plaintiff's motion to submit new copies of these exhibits.

Next, plaintiff has filed a motion to supplement the record with new exhibits not previously submitted in this litigation. I construe this motion as a motion under Fed. R. App. P. 10(e) to modify the record on appeal. Fed. R. App. P. 10(e) states in relevant part:

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

- (A) on stipulation of the parties;
- (B) by the district court before or after the record has been forwarded; or
- (C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

In this case, plaintiff is not trying to correct the record on appeal by adding something that was omitted or misstated in the record by error or accident. Rather, he wants to add documents to the record on appeal that were not part of the record before this court. Fed. R. App. P. 10(a) limits the record on appeal to the "original papers and exhibits filed in the district court." In other words, the record on appeal should include only those matters that were before the trial court. Supplementing the record to add something that was not before the trial court would be a misstatement of the record. Thus, plaintiff's motion to supplement the record on appeal will be denied.

ORDER

IT IS ORDERED that:

1. Plaintiff's motion for leave to submit copies of exhibits submitted earlier in the case, dkt. #32, is DENIED as unnecessary.

2. Plaintiff's motion to supplement the record on appeal, dkt. #33, is DENIED.

Entered this 14th day of September, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge